In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 983

BUFORD WILSON WORLEY AND A. C. BENNETT,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioners were convicted of violations of the liquor laws. On March 18, 1966, petitioner Worley was sentenced to three years in prison and fined $1,000, and petitioner Bennett to twelve months in prison and four years probation thereafter. The court of appeals affirmed.

At the trial, an Alcohol and Tobacco Tax Unit agent read to the jury transcripts of several sound recordings of the agent's telephone conversations with petitioners. The witness identified the speakers and testified that he had compared the typewritten transcripts with the recordings and found them to be the same. The recordings were available. Petitioners

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objected upon the ground that the transcripts of the recordings were not the best evidence. The trial judge said, "Well, he says he has the recording available here. Would you rather hear the recording?" Defense counsel responded, "Your Honor, we will have to take that up when it comes up, I guess" (App. 2). The court overruled all objections to the reading of the transcripts to the jury, stating that he would make the prosecution produce the recordings themselves if the defense requested production (App. 34–36). No such request was ever made, nor was it ever contended that the transcripts were in fact inaccurate. Since defense counsel twice deliberately declined the court's offer, they are in no position to object to the use of the transcripts.

Absent a demand for production of the recordings to test the accuracy of the transcripts, the court did not abuse its discretion in this quite common situation where the "best evidence" requires explanation. Here it was necessary for the agent who made the recordings to identify the speakers, to specify the dates, times, places, and circumstances of their making, and even to interpret certain statements made by the antiphonal speaker (as when he turned away from the telephone to speak to another person at his end of the line). This situation is comparable to the frequently encountered situation where summaries are used and the "best evidence" ignored to avoid lengthy explanation, or where a witness is called upon to explain and interpret an original written document. No abuse of discretion is involved in the use of a transcript of a recording for this purpose. Defense counsel still had

their opportunity to cross-examine the witness as to all aspects of the conversations themselves, and the making of the recordings and the transcripts, as well as their continuing right to production of the original recordings. Cf. *United States* v. *Hall,* 342 F. 2d 849 (C.A. 4), certiorari denied, 382 U.S. 812.

We respectfully submit that the petition for a writ of certiorari should be denied.

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